

Gwendolyn C. Payton,  
 WSBA No. 26752  
 paytong@lanepowell.com  
 Andrew G. Yates,  
 WSBA No. 34239  
 yatesa@lanepowell.com  
 LANE POWELL PC  
 1420 Fifth Avenue, Suite 4100  
 Seattle, Washington 98101-2338  
 Telephone: 206.223.7000  
 Facsimile: 206.223.7107

THE HONORABLE FRED VAN SICKLE

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON  
 AT SPOKANE

ROBERT EGGART, individually and )  
 on behalf of himself and all other )  
 Washington residents and entities )  
 similarly situated, )

Plaintiff, )

v. )

A.L.S. ENTERPRISES, INC., )  
 CABELA'S INC., CABELA'S )  
 WHOLESALE, INC., GANDER )  
 MOUNTAIN CO., BASS PRO )  
 SHOPS, INC., BROWNING, INC., and )  
 ROBINSON OUTDOORS, INC., f/k/a )  
 ROBINSON LABORATORIES, INC., )

Defendants. )

No. CV-09-107-FVS

MEMORANDUM IN  
 SUPPORT OF DEFENDANTS'  
 UNOPPOSED MOTION TO  
 STAY UNTIL AFTER A  
 DECISION BY THE JOINT  
 PANEL ON MULTIDISTRICT  
 LITIGATION ON PENDING  
 MOTION FOR TRANSFER

Defendants A.L.S. Enterprises, Inc., Cabela's Incorporated, Cabela's  
 Wholesale, Inc., Gander Mountain Company, and Bass Pro Shops, Inc.

MEMO ISO UNOPPOSED MOTION TO STAY - 1  
 No. CV-09-107-FVS

LANE POWELL PC  
 1420 FIFTH AVENUE, SUITE 4100  
 SEATTLE, WASHINGTON 98101-2338  
 206.223.7000 FAX: 206.223.7107

1 (collectively “Defendants”), by their attorneys, move the Court to stay all  
2 deadlines in this action until after a decision by the Joint Panel on Multidistrict  
3 Litigation (“JPML”) on the pending motion seeking to transfer to a single  
4 federal district court all of the cases that have been filed in federal courts  
5 nationwide against Defendants that relate to the advertising and sale of odor  
6 control hunting clothing licensed by Defendant A.L.S. Enterprises, Inc.  
7 (“ALS”). Defendants’ motion is not opposed by Plaintiff.

### 8 BACKGROUND

9  
10 As this Court may be aware, a motion has been filed with the JPML  
11 seeking to transfer to a single federal district court all of the cases that have  
12 been filed in federal courts nationwide that relate to the advertising and sale of  
13 odor control hunting clothing licensed by Defendant ALS.

14  
15 Plaintiff Robert Eggart filed his complaint in this case on April 9, 2009,  
16 asserting claims for violation of Washington’s Consumer Protection Act, unjust  
17 enrichment, and civil conspiracy. **Multiple** actions alleging similar claims have  
18 now been filed in other district courts around the county, including the District  
19 of Minnesota. The plaintiffs in all the cases are represented by the same lead  
20 counsel who represent Plaintiff in this case. Plaintiffs have filed a motion  
21 before the JPML seeking transfer for coordination or consolidation pursuant to  
22 28 U.S.C. § 1407(a). See Motion of Plaintiffs **Mike Buetow, Gary Steven**  
23 **Richardson Jr., Jeff Brosi, Dennis Deeb, Julian Beld, Scott Dorris, Rob**  
24 **Levin, Dennis Pickering and Thomas Pemberton in Support of Their**  
25  
26

1 **Motion to Transfer Related Actions For Coordinated Pretrial Proceedings**  
2 **Pursuant to 28 U.S.C. § 1407** (“pending JPML motion”), filed on March 31,  
3 2009, attached to the Declaration of Andrew G. Yates as Exhibit A. A hearing  
4 on Plaintiffs’ motion will be heard by the JPML on May 28, 2009. (Yates  
5 Decl., Exhibit B.)  
6

7 **ARGUMENT**

8 In light of the pending JPML motions, Defendants respectfully request  
9 that the Court stay this action until after the pending JPML motion is decided.

10 To the extent the JPML ultimately determines that transfer is warranted,  
11 the stay is necessary to achieve the purposes of 28 U.S.C. § 1407 – the  
12 promotion of the just and efficient administration of the litigation. Absent a  
13 stay, this Court could well be required to invest a great deal of time and  
14 resources in, for example, deciding the motion to dismiss recently filed by  
15 Defendants, even though this Court may lose jurisdiction over this case when  
16 the Panel decides the pending JPML motion. Moreover, the granting of a stay  
17 here for a short period of time to permit the JPML to rule would impose no  
18 prejudice on the Plaintiff, and Plaintiff does not oppose the motion.  
19  
20

21 It is well settled that “[a] district court has the inherent power to stay its  
22 proceedings. This power to stay ‘is incidental to the power inherent in every  
23 court to control the disposition of the causes on its docket with economy of time  
24 and effort for itself, for counsel, and for litigation.’” Rivers v. The Walt Disney  
25 Col., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997) (quoting Landis v. North Am.  
26

1 Co., 299 U.S. 248, 254 (1936)). Accord, e.g., Republic of Venezuela v. Philip  
2 Morris Companies, Inc., 1999 WL 33911677 (S.D. Fla. 1999) (citing Landis)  
3 (unpublished opinion attached to Yates Decl., Exhibit C); Armstrong v. Mille  
4 Lacs County Sheriffs Dept., 112 F. Supp. 2d 840, 843 (D. Minn. 2000) (stating  
5 that “[a]s a Federal District Court, we have the inherent power to stay the  
6 proceedings of an action, so as to control our docket, to conserve judicial  
7 resources, and to provide for the just determination of cases which are pending  
8 before us.”).

10 Consistent with this principle, courts routinely exercise their inherent  
11 power to stay actions where, as here, motions to transfer and consolidate are  
12 pending before the JPML. See, e.g., Rivers, 980 F. Supp. at 1362 (“it appears  
13 that a majority of courts have concluded that it is often appropriate to stay  
14 preliminary pretrial proceedings while a motion to transfer and consolidate is  
15 pending with the MLD Panel”) (citations omitted); Calder v. A.O. Smith Corp.,  
16 No. 04-1481, 2004 U.S. Dist. LEXIS 12083, at \*1 (D. Minn. 2004) (granting  
17 stay pending decision by JPML and stating that “[i]t is appropriate to defer the  
18 resolution of certain pretrial matters until the Panel renders a decision with  
19 regard to whether a case should be transferred to the MDL court.”); Benge v.  
20 Eli Lilly and Co., 553 F. Supp. 2d 1049, 1050 (N.D. Ind. 2008) (granting  
21 request for stay pending transfer by JPML because stay would allow for  
22 coordination of discovery and pre-trial proceeding and because judicial  
23 economy and potential prejudice weighted in favor of granting the stay);  
24  
25  
26

1 Namociv v. Cooper Tire and Rubber Co., 225 F. Supp. 2d 582, 585 (D. Md.  
2 2001) (granting stay to make sure that “there is consistent treatment of the  
3 numerous lawsuits and that judicial resources are not wasted”); Good v.  
4 Prudential Ins. Co. v. Am., 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (observing  
5 that “[c]ourts frequently grant stays pending a decision by the MDL Panel”); 15  
6 Wright, Miller, & Cooper, Federal Practice and Procedure § 3866.1 (“district  
7 courts often will exercise their discretionary power to stay the proceedings  
8 before them with regard to a variety of matters pending a decision by the Panel  
9 regarding the transfer of a case, especially when such a stay would further the  
10 policies of judicial economy, efficiency, and consistency that are deeply  
11 embedded in the federal multidistrict litigation statute”); see also Multidistrict  
12 Litigation Manual, § 3.15 (“District courts have . . . readily stayed proceedings  
13 pending a Panel decision”); Manual for Complex Litigation, Fourth, 22.35 (“A  
14 stay pending the Panel’s decision can increase efficiency and consistency,  
15 particularly when the transferor court believes that a transfer order is likely and  
16 when the pending motions raise issues likely to be raised in other cases as  
17 well”); accord Aetna U.S. Healthcare, Inc. v. Aktiengesellschaft, 48 F. Supp. 2d  
18 37, 43 (D. D.C. 1999) (granting defendant’s motion to stay the case “pending  
19 resolution by the Judicial Panel on Multidistrict Litigation of defendants’  
20 motion to consolidate and transfer this and other related cases” because,  
21 “[g]iven the potential for common and overlapping issue in many of these  
22 cases, . . . such a stay would further judicial economy and eliminate the  
23  
24  
25  
26

1 potential for conflicting pretrial rulings were the case ultimately transferred”);  
2 Bullard v. American Airlines, 929 F. Supp. 1284, 1286-87 (W.D. Mo. 1996)  
3 (“[i]n light of” the filing of “a motion with the Judicial Panel for Multidistrict  
4 Litigation to consolidate all actions arising out of” the plane crash at issue, “the  
5 Court will stay ruling on the motion to dismiss pending the ruling on the motion  
6 to consolidate”); Republic of Venezuela, 1999 WL 33911677, at \*1-2 (granting  
7 a stay pending the JPML’s decision on the Motion to Transfer and Consolidate).

9 Defendants respectfully submit that a stay pending a decision by the  
10 Panel on the pending JPML motion would promote judicial economy here. It  
11 would be highly inefficient for this Court to expend time and resources  
12 “familiarizing itself with the intricacies of a case” that could well ‘be heard by  
13 another judge.” Rivers, 980 F. Supp. at 1360. Indeed, “any efforts on behalf of  
14 this Court concerning case management will most likely have to be replicated  
15 by the judge that is assigned to handle the litigation” if the JPML grants the  
16 pending JPML motion. Id. at 1360-61.

### 18 CONCLUSION

19 Defendants requests that this Court enter an order staying this case until  
20 after the pending JPML motion is decided.  
21  
22  
23  
24  
25  
26

1 DATED: May 19, 2009.

2 Respectfully submitted,

3  
4 s/Andrew G. Yates

5 Gwendolyn Payton, WSBA #26752

6 Andrew G. Yates, WSBA #34239

7 LANE POWELL PC

8 1420 Fifth Avenue, Suite 4100

9 Seattle, WA 98101-2338

10 Telephone: (206) 223-7746

11 Fax: (206)223-7107

12 Email: [paytong@LanePowell.com](mailto:paytong@LanePowell.com)

13 [yatesa@LanePowell.com](mailto:yatesa@LanePowell.com)

14  
15 *Of Counsel:*

16 Naikang Tsao

17 Michael D. Leffel

18 Theresa A. Andre

19 FOLEY & LARDNER LLP

20 150 E. Gilman Street, P.O. Box 1497

21 Madison, WI 53701

22 Telephone: (608) 258-4250

23 Fax: (608) 258-4258

24 Email: [ntsao@foley.com](mailto:ntsao@foley.com)

25  
26 Attorneys for A.L.S. Enterprises, Inc.,  
Cabela's Incorporated, Cabela's  
Wholesale, Incorporated, Gander  
Mountain Co. and Bass Pro Shop, Inc.

**CERTIFICATE OF SERVICE**

Pursuant to RCW 9.A.72.085, the undersigned certifies that on the 19<sup>th</sup> day of May, 2009, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Anthony D. Shapiro  
Hagens Berman Sobol Shapiro LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101-2609  
tony@hbsslaw.com

Renae D. Steiner  
Vincent J. Esades  
Barbara J. Felt  
Rachel L. B. Stoering  
HEINS MILLS & OLSON, P.L.C.  
310 Clifton Avenue  
Minneapolis, MN 55403  
rsteiner@heinsmills.com  
vesades@heinsmills.com  
bfelt@heinsmills.com  
rstoering@heinsmills.com

Ernest W. Grumbles III  
Thomas J. Leach  
MERCHANT & GOULD  
3200 IDS Center, 80 S. 8th Street  
Minneapolis MN 55402-2215  
egrumbles@merchantgould.com  
tleach@merchantgould.com

Molly A. Malouf  
Corr Cronin Michelson Baumgardner  
& Preece LLP  
1001 Fourth Avenue, Suite 3900  
Seattle, WA 98154-1051  
E-Mail: mmalouf@corrchronin.com

Executed on 19<sup>th</sup> day of May, 2009, at Seattle, Washington.

s/ Andrew G. Yates

Signature of Attorney

WSBA #: 34239

Address: 1420 Fifth Avenue, Seattle, WA

Telephone: 206/223-7000

Fax: 206/223-7107

E-mail: yatesa@lanepowell.com

Attorney(s) For: Defendants A.L.S., Cabela's  
Incorporated, Cabela's Wholesale, Bass Pro  
Shop and Gander Mountain



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

MEMO ISO UNOPPOSED MOTION TO STAY - 9  
No. CV-09-107-FVS

124207.0001/1713988.1

**LANE POWELL PC**  
1420 FIFTH AVENUE, SUITE 4100  
SEATTLE, WASHINGTON 98101-2338  
206.223.7000 FAX: 206.223.7107